

In re Patent Application of:  
**ZAKHAROFF**  
Serial No. 10/786,450  
Filing Date: **FEBRUARY 25, 2004**

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#### REMARKS

The Examiner is thanked for the thorough examination of the present application. The patentability of the claims is discussed below.

#### I. The Claimed Invention

The invention, as recited in independent Claim 1, for example, is directed to a communications system which includes at least one destination server for hosting a plurality of electronic mail (email) message boxes, and a plurality of communications devices for generating email messages each associated with a respective message box. The system further includes a delivery server including a plurality of queues and a controller. More particularly, the controller is for storing the email messages generated by the communications devices in a first queue, and attempting to send the stored email messages to the at least one destination server at a first sending rate. The controller also moves email messages stored in the first queue to a second queue based upon a delivery failure. The controller then attempts to send email messages stored in the second queue to the at least one destination server at a second sending rate less than the first sending rate. The controller also advantageously moves email messages from the second queue to the first queue having a common characteristic with a successfully delivered email message.

Independent Claim 10 is directed to a corresponding delivery server of independent Claim 1. Independent Claim 17 is directed to a corresponding method of independent Claim 1, and

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independent Claim 24 is directed to a related computer-readable medium.

## **II. The Claims Are Patentable**

The Examiner rejected independent Claims 1, 10, 17 and 24 over the five-way combination of Phillips et al., Cedola, Nassiri, Shaw et al., and Hardt. The Applicant submits that even a selective combination of the five references fails to disclose the claimed invention. In addition, Applicant also submits that the selective combination of bits and pieces of the five cited references is improper.

Phillips et al. is directed to a document delivery network server having a set of integrated functions including sending, receiving, routing and filing of faxes and e-mails to other users. The document delivery system is based on a client/server model having both analog and digital fax line capabilities. The server side provides integrated systems functionality based on industry standard, commercially available hardware and a mix of industry standard and proprietary software components including integrated fax/modem modules, an embedded OS, embedded plug-and-play driver sets, embedded e-mail gateways, an embedded fax archive, embedded back-up/restore, proprietary high efficiency line utilization and highly efficient load balancing. The Examiner correctly recognized that Phillips et al. fails to disclose a first sending rate and attempting to send email messages stored in the second queue to the at least one destination server at a second sending rate less than the first sending rate, moving email messages stored in the first queue to a second queue based upon a delivery

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failure, and moving email messages from the second queue to the first queue having a common characteristic with a successfully delivered email message. The Examiner then turned next to Cedola in an attempt to supply some of these critical deficiencies.

Cedola is directed to a baud rate detection system and method that automatically detects the baud rate at which a client computing device is communicating with a host computer over a serial connection. The host computer is coupled to the client computing device via a serial connection, which employs a Unimodem null serial protocol. The baud rate detection system includes a baud rate selector to select among multiple baud rates that the client computing device might use to transmit a predefined message. The system also includes a message detector to listen at the currently selected baud rate for the predefined message. If the message detector receives the message, the current baud rate is the correct rate and is used for continuing communications with the client computing device. On the other hand, if the message detector fails to detect the message after a predetermined time period or detects characters not included in the predefined message, the baud rate selector chooses a new baud rate and the message detector begins listening at the new baud rate. This process continues until the baud rate detection system finds the appropriate baud rate for communicating with the client computing device. The Examiner recognized that even a selective combination of Phillips et al. and Cedola fails to disclose moving email messages stored in the first queue to a second queue based upon a delivery failure, and that moving email messages from the second queue to the first queue having a

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common characteristic with a successfully delivered email message. The Examiner then turned next to Nassiri in an attempt to supply these critical deficiencies.

Nassiri is directed to a method, program and system to verify that an electronic message was sent to the intended recipient and to provide the originator of the electronic message with an independent confirmation that verifies the time and date that the electronic message was sent and the time and date that it was delivered. A secondary purpose is to verify the identity of an intended electronic mail recipient prior to the intended recipient's receipt of the electronic mail. The device includes a central processing unit to facilitate the receipt and delivery and confirmation of electronic mail. The processing unit tracks incoming and outgoing electronic messages, tracks customer accounts and identities, archives all relevant information for future use and/or reference, and disseminates the foregoing data to regional/local servers and clients as necessary. The Examiner recognized that even a selective combination of Phillips et al., Cedola, and Nassiri fails to disclose moving email messages from the second queue to the first queue having a common characteristic with a successfully delivered email message. The Examiner next further turned to Shaw et al. in an attempt to supply these critical deficiencies.

Shaw et al. is directed to an enterprise email management system designed to handle large volumes of email, responding through enterprise email system users or automated means. The enterprise email system processes incoming email using a set of configurable rules that examine each message for a specific attribute state condition and invoke a configurable

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action when the attribute satisfies the condition. A number of actions may be invoked such as routing a message to a specific mail queue. The enterprise email system assigns a mail queue timer when a message is moved into a mail queue. Each mail queue has a different mail queue timeout value that specifies the maximum amount of time that a message may sit idle within a mail queue. The enterprise email system may automatically move a message from a mail queue into a mailbox of an enterprise email system user that subscribed to the mail queue. A mailbox timer is then set for the message and the mailbox timer is compared with a mailbox timeout value that specifies the amount of time that a message may sit idle within a mail queue. If the mail queue timer expires, the message is returned to the mail queue from where it came. If the mail queue timer expires, then the message is routed to another mail queue or enterprise email user. The Examiner still further recognized that even a selective combination of Phillips et al., Cedola, Nassiri, and Shaw et al. fails to disclose the email messages being moved from the second queue to the first queue having a common characteristic. The Examiner next turned to yet a fifth reference, Hardt, for this critical deficiency.

Hardt is directed to a system and method of automated pseudonymous email address creation and management. The system provides users the ability to create disposable email addresses, so that if a pseudonymous email address is placed on an unsolicited commercial email distribution list, the unsolicited email message can be prevented from reaching the user.

Applicant submits that the Examiner mischaracterized Cedola in that Cedola fails to disclose a first sending rate and

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attempting to send email messages stored in the second queue to the at least one destination server at a second sending rate less than the first sending rate. Instead, Cedola discloses sending serial data, or a text string, and not email messages, as recited in the independent claims. Moreover, Cedola discloses storing baud rates in a baud rate table, and then selecting the next baud rate in the table upon detecting a failure of the sending of a text string. Thus, the second attempted baud rate may be more than the first rate, depending on the order of the rates stored in the table. Accordingly, even a selective combination of the cited references fails to disclose a first sending rate and attempting to send email messages stored in the second queue to the at least one destination server at a second sending rate less than the first sending rate.

Applicant further submits that the Examiner mischaracterized Nassiri, as Nassiri fails to disclose moving email messages stored in the first queue to a second queue based upon a delivery failure, and that moving email messages from the second queue to the first queue having a common characteristic with a successfully delivered email message. The Examiner contended that paragraph 0009 of Nassiri discloses the above-noted recitation. In contrast, Applicant points out that paragraph 0009, the background of Nassiri, describes the Shaw et al. patent cited herein. Nonetheless, paragraph 0009 of Nassiri discloses processing incoming email messages using a set of configurable rules that examine the incoming messages for particular attribute state conditions. When the conditions are satisfied, an action is invoked, and the message is moved into a

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mail queue with a timer associated therewith. (See also Shaw et al., Col. 11, lines 20-30). If the timer expires, the message is routed to another queue or server. While Nassiri discloses email delivery verification, paragraph 0009 of Nassiri specifically discloses that Shaw et al., which is described above, does not "depict a method of customized email delivery verification." Thus, the movement of email messages is not based upon a delivery failure. Similarly, the arguments herein apply to Shaw et al. as well. Accordingly, even a selective combination of the prior art fails to disclose moving email messages stored in the first queue to a second queue based upon a delivery failure, and that moving email messages from the second queue to the first queue having a common characteristic with a successfully delivered email message.

Applicant further submits that the Examiner's proposed combination of references is improper. More particularly, a person having ordinary skill in the art would not look to the integrated document delivery teachings of Phillips et al. to combine with the automatic baud rate detection for device synchronization of Cedola, and further with the email receipt verification of Nassiri, the enterprise email management of Shaw et al., and the pseudonymous email address manager of Hardt, in an effort to arrive at the claimed invention, as recited in the independent claims. Indeed, the Examiner is using impermissible hindsight reconstruction based on Applicant's specification in an attempt to produce the claimed invention by selectively assembling disjoint pieces of the prior art.

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Accordingly, it is submitted that independent Claims 1, 10, 17, and 24 are patentable over the prior art. Their respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

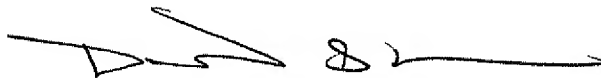


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**III. CONCLUSION**

In view of the the arguments provided herein, it is submitted that all the claims are patentable. Accordingly, a Notice of Allowance is requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,



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